

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

HILDA L. SOLIS, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

SEAFOOD PEDDLER OF SAN  
RAFAEL, INC., dba SEAFOOD  
PEDDLER; ALPHONSE SILVESTRI;  
RICHARD MAYFIELD; FIDEL  
CHACON,

Defendants.

Case No. 12-cv-0116 JW (NC)

**TENTATIVE RULING RE:  
SEAFOOD'S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS**

Re: Dkt. No. 20

Defendant Seafood Peddler moves to compel the further production of documents responsive to Seafood's first request for production of documents, including the FLSA Narrative that the Secretary inadvertently disclosed in responding to Seafood's document request. Dkt. No. 20.

This order provides the parties with a tentative ruling as to issues to be addressed at the hearing on Seafood's motion to compel:

(1) **Waiver of Confidential Informant's Privilege.** The Secretary did not waive the confidential informant's privilege by inadvertently producing the FLSA Narrative, DOL552-567, to Seafood's counsel;

(2) **Delayed Production of Privilege Log.** The Secretary did not waive all asserted privileges by failing to provide a privilege log at the time she responded to

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1 Seafood's document production request;

2       (3) **Privilege Log.** As to the privileges asserted by the Secretary, including the  
 3 informant's privilege, the deliberative process privilege, the attorney-client privilege, the  
 4 work product doctrine, and the investigative files privilege, the Secretary's index of  
 5 documents withheld or redacted pursuant to a privilege or objection, Dkt. No. 28-6, is  
 6 insufficient in its current form as it fails to describe the responsive material withheld; the  
 7 identity and position of its author; the date it was written; the identity and position of all  
 8 addressees and recipients, the material's present location, and the specific reasons for its  
 9 being withheld, including the privilege invoked and the grounds for withholding. *See*  
 10 Fed. R. Civ. P. 26(b)(5)(A)(ii); *see also Friends of Hope Valley v. Frederick Co.*, 268  
 11 F.R.D. 643, 650-51 (E.D. Cal. 2010).

12       Finally, Seafood's reply asserts deficiencies in the Secretary's privilege log that  
 13 the Secretary has not had an opportunity to rebut. *See* Reply at 14-16. For example,  
 14 Seafood contends that the work product privilege claimed as to "WH Letters to  
 15 Employees" is waived as the documents have been shared with third parties. *Id.* at 15.  
 16 The parties are therefore ordered to meet and confer in person in Courtroom A, 15th  
 17 Floor, San Francisco at 9:00 a.m. on August 22, 2012 to discuss necessary amendments to  
 18 be made to the Secretary's privilege log and the need and timing for additional briefing  
 19 regarding asserted privileges. The motion to compel hearing previously scheduled for  
 20 9:00 a.m. will be held at 10:00 a.m. before Magistrate Judge Nathanael Cousins.

21  
 22           IT IS SO ORDERED.

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 24           DATED: August 20, 2012

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 NATHANAEL M. COUSINS  
 United States Magistrate Judge